

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK HUTCHINSON,

Plaintiff,

v. Case No. 15-11158
Honorable Linda V. Parker

STERLING MANAGEMENT LTD., et al.,

Defendants.

/

OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE'S JUNE 29, 2016 REPORT AND RECOMMENDATION [ECF NO. 26], (2) DISMISSING PLAINTIFF'S COMPLAINT AGAINST DEFENDANTS FOR FAILURE TO PROSECUTE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(b), AND (3) DENYING AS MOOT DEFENDANTS' MOTION TO DISMISS [ECF NO. 21]

Plaintiff Derrick Hutchinson commenced this lawsuit against Defendants Sterling Management Ltd. and Lancaster Lakes LLC (collectively “Defendants”) in Oakland County Circuit Court and it was removed to this Court on March 27, 2015. (ECF No. 1.) On December 29, 2015, Defendants filed a motion for summary judgment. (ECF No. 21.) The matter has been referred for all pretrial matters to Magistrate Judge Stephanie Dawkins Davis.

On April 27, 2016, Magistrate Judge Davis issued a show cause order due to Plaintiff’s failure to file a timely response to the motion for summary judgment. (ECF No. 24.) The order required Plaintiff to show cause in writing, on or before

May 11, 2016, why the magistrate judge should not recommend that the complaint be dismissed due to Plaintiff's failure to respond to the motion. (*Id.*) Magistrate Judge Davis warned Plaintiff that his "failure to timely or adequately respond in writing to the Order to show cause or timely file a response to the motion would result in a recommendation that the motion be granted or that the entire matter be dismissed under Rule 41(b)." (*Id.* at Pg ID 217-18.)

When Plaintiff failed to respond to the show cause order, Magistrate Judge Davis issued a Report and Recommendation ("R&R") on June 29, 2016, recommending that the Court dismiss without prejudice Plaintiff's claims against Defendants pursuant to Federal Rule of Civil Procedure 41(b). (ECF No. 26.) At the conclusion of the R&R, Magistrate Judge Davis informs the parties that they must file any objections to the R&R within fourteen days. (*Id.* at Pg ID 268.) She further advises that the "[f]ailure to file specific objections constitutes a waiver of any further right of appeal." (*Id.*, citations omitted). Defendants filed two objections to the R&R, requesting that the court: (1) grant Defendants' unopposed motion for summary judgment or (2) dismiss Plaintiff's complaint with prejudice pursuant to Rule 41(b). (ECF No. 27.)

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Davis. By failing to respond to Magistrate Judge Davis's show cause order or Defendants' motion for summary judgment, Plaintiff

has failed to prosecute this lawsuit and the action may be involuntarily dismissed pursuant to Federal Rule of Civil Procedure 41(b). As set forth by Magistrate Judge Davis, the relevant factors favor dismissal as a result of Plaintiff's failure to prosecute this action. (*Id.* at Pg ID 266.) This dismissal should be without prejudice given that Plaintiff was represented by counsel. The Court therefore adopts Magistrate Judge Davis's June 29, 2016 Report and Recommendation.

Accordingly,

IT IS ORDERED that Plaintiff's complaint against Defendants is **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) and that the pending motion for summary judgment (ECF No. 21) is **DENIED AS MOOT**.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: September 13, 2016

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, September 13, 2016, by electronic and/or U.S. First Class mail.

s/ Richard Loury
Case Manager